

AMENDMENTS TO FEDERAL SEED ACT

JUNE 26, 1956.—Referred to the House Calendar and ordered to be printed

Mr. COOLEY, from the Committee on Agriculture, submitted the following

R E P O R T

[To accompany S. 1688]

The Committee on Agriculture, to whom was referred the bill (S. 1688) to amend the Federal Seed Act, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

This bill would amend the penalty provisions of the Federal Seed Act in two respects:

(1) Require that in order to constitute a criminal offense seed misbranding must be done "knowingly, or as a result of either gross negligence or failure to make a reasonable effort" to determine pertinent facts and,

(2) Provide a civil penalty payable to the United States for any violation of the act or regulations, whether with or without intention.

Hearings were held on H. R. 6201 by Mr. Dague, H. R. 6203 by Mrs. Knutson, and H. R. 6219 by Mr. Lovre, all similar to S. 1688.

At the hearings, the measure was supported by the Department of Agriculture and by spokesmen for various associations of seed dealers. Following is the text of the Senate report on the bill:

This bill would remove the criminal penalty for inadvertent violation of the Federal Seed Act where no criminal intent is present, and provides a civil penalty for such violation. Under existing law shippers of seed may be subject to criminal penalty and the stigma attached thereto if they fail to make a proper analysis and certification of the seed shipped. Your committee feels that this is unnecessarily strict. The language of the bill was worked out by your committee with the seed trade and the Department of Agriculture, and is satisfactory to all.

Sections 2, 3, and 4 of the bill, which would be added by committee amendments, contain technical amendments re-

quired as a result of the substantive changes made by the first section of the bill.

The committee amendments are fully explained by the attached letters from the Department of Agriculture.

DEPARTMENT OF AGRICULTURE,
Washington 25, D. C., June 16, 1955.

HON. ALLEN J. ELLENDER,
*Chairman, Committee on Agriculture and Forestry,
United States Senate.*

DEAR SENATOR ELLENDER: This is in reply to your letter of April 15 requesting a report on S. 1688, a bill to amend section 406 of the Federal Seed Act.

This Department recommends that the bill be passed, provided it is changed as suggested below.

The effect of the proposed amendment is twofold. The insertion of the word "knowingly" in the proposed subsection 406 (a) would make it necessary to prove a measure of intent to establish a violation of the act, and the new subsection 406 (b) authorizes a civil action for the assessment of a penalty, in which case it would not be necessary to establish intent.

The necessity to prove that a violation was committed knowingly under the Importation of Adulterated Seeds Act of 1912, as amended, was one of the principal causes for the repeal of this act and its supersedure by the Federal Seed Act in 1939. The word "knowingly" was deliberately omitted from the Federal Seed Act. However, prosecutions are not recommended under this act unless the Department is believed to have evidence of knowledge, gross negligence, or disregard of the requirements of the act, or the regulations thereunder. The Department believes that criminal action should be available in these three classes of cases and suggests that if section 406 is to be amended to require some element of knowledge or intent for criminal prosecutions, the amendment should specifically provide for prosecution in such classes of cases. It is suggest that in that event, the provisions of section 406 be amended to read as follows:

"SEC. 406. (a) Any person who knowingly, or as a result of gross negligence, or as a result of disregard of the requirements of this Act or the rules and regulations made and promulgated thereunder, violates any provision of this Act or such rules and regulations shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall pay a fine of not more than \$1,000, for the first offense, and upon conviction for each subsequent offense not more than \$2,000."

The Department does not object to the proposed new subsection 406 (b) providing for civil penalties, although it is not known how effective a deterrent to violations the civil penalties may prove to be.

It is recommended that, if proposed subsection 406 (b) is enacted into law, incidental changes be made in sections 204

and 412 of the act so that these sections would read, respectively, as follows:

"SEC. 204. The use of a disclaimer or nonwarranty clause in any invoice, advertising, labeling, or written, printed, or graphic matter, pertaining to any seed shall not constitute a defense, or be used as a defense in any way, in any prosecution or other proceeding brought under the provisions of this Act, or the rules and regulations made and promulgated thereunder.

"SEC. 412. The institution of any one of the proceedings provided for in sections 405, 406, 409, 410, and 411 shall not bar institution of any of the others, except that action shall not be instituted under both subsections 406 (a) and (b) for the same cause of action. Nothing in this Act shall be construed as requiring the Secretary of Agriculture to recommend prosecution, or institution of civil penalty proceedings, libel proceedings, cease-and-desist proceedings, or proceedings for the enforcement of a cease-and-desist order, for minor violations of this Act or the rules and regulations made and promulgated thereunder whenever he believes that the public interest will be adequately served by suitable written notice or warning."

It is recommended that a savings clause be included in the bill providing that the amendments made by it would apply only with respect to violations occurring after the date of enactment, so as to avoid questions concerning prosecutions of offenses previously committed.

These amendments, if approved, are not expected to increase the cost of administration of the Federal Seed Act.

The Department is considering recommending the enactment of various other amendments of the Federal Seed Act in a separate bill which it is anticipated will be sent to the Congress in the near future. That bill would make certain changes in section 204 not reflected in the foregoing proposal concerning that section.

In view of the subsequent request that this report be submitted today we are not awaiting advice from the Bureau of the Budget regarding the relationship of this proposed legislation to the program of the President.

Sincerely yours,

EARL L. BUTZ, *Acting Secretary.*

DEPARTMENT OF AGRICULTURE,
Washington, D. C., November 4, 1955.

HON. ALLEN J. ELLENDER,
*Chairman, Committee on Agriculture and Forestry,
United States Senate.*

DEAR SENATOR ELLENDER: On June 16, 1955, this Department reported, at the request of your committee, on S. 1688, 84th Congress, a bill to amend section 406 of the Federal Seed Act (7 U. S. C. 1596).

The report suggested that certain changes be made in the bill. It subsequently developed that the proposed changes

were not acceptable in some respects to the seed trade regulated by the act, and discussions were had with members and counsel of your committee and the seed trade in an effort to draft language that would be agreeable to all concerned.

On September 14, 1955, Mr. Harker Stanton, counsel for your committee, inquired whether this Department would object to a bill that would amend the present provisions of section 406 of the act to read as follows:

"(a) Any person who knowingly, or as a result either of gross negligence or of a failure to make a reasonable effort to inform himself of the pertinent facts, violates any provision of this Act or the rules and regulations made and promulgated thereunder shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall pay a fine of not more than \$1,000, for the first offense, and upon conviction for each subsequent offense not more than \$2,000."

We understand that proposed subsection 406 (b) of the act as set forth in S. 1688 would be retained in the bill and the amendments of sections 204 and 412 of the act and a savings clause as proposed in our report on S. 1688 would be included in the bill. Under such circumstances this Department would not object to the proposed subsection 406 (a) as set forth above.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

TRUE D. MORSE,
Acting Secretary.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, and existing law in which no change is proposed is shown in roman):

FEDERAL SEED ACT OF 1939, AS AMENDED

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SEC. 204. The use of a disclaimer or nonwarranty clause in any invoice, advertising, labeling, or written, printed, or graphic matter, pertaining to any seed shall not constitute a defense, or be used as a defense in any way, in any prosecution~~],~~ or in any proceeding for confiscation of seeds,~~]~~ *or other proceeding* brought under the provisions of this Act, or the rules and regulations made and promulgated thereunder.

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SEC. 406. (a) Any person who ~~violates any provision of this Act or the rules and regulations made and promulgated thereunder~~ *knowingly, or as a result either of gross negligence or of a failure to make a reasonable effort to inform himself of the pertinent facts, violates any provision of this Act or the rules and regulations made and promulgated thereunder* shall be deemed guilty of a misdemeanor and, upon con-

viction thereof, shall pay a fine of not more than \$1,000, for the first offense, and upon conviction for each subsequent offense not more than \$2,000.

(b) *Any person who violates any provision of this Act or the rules and regulations made and promulgated thereunder shall forfeit to the United States a sum, not less than 25 or more than \$500, for each such violation, which forfeiture shall be recoverable in a civil suit brought in the name of the United States.*

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SEC. 412. The institution of any one of the proceedings provided for in sections 405, 406, 409, 410, and 411, ~~for criminal prosecution under section 406~~ shall not bar institution of any of the others, *except that action shall not be instituted under both subsections 406 (a) and (b) for the same cause of action.* ~~However, nothing~~ *Nothing* in this Act shall be construed as requiring the Secretary of Agriculture to recommend prosecution ~~for institution of~~, *or institution of civil penalty proceedings*, libel proceedings, cease-and-desist proceedings, or proceedings for the enforcement of a cease-and-desist order, for minor violations of this Act *or the rules and regulations made and promulgated thereunder* whenever he believes that the public interest will be adequately served by suitable written notice or warning.

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